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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

EPIC GAMES, INC.,

Plaintiff,

vs.

APPLE INC.,

Defendant.

No. 3:20-CV-05640-EMC

**DECLARATION OF TIMOTHY
SWEENEY IN SUPPORT OF
PLAINTIFF EPIC GAMES INC.'S
MOTION FOR A TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

Date: August 17, 2020

Courtroom: 5, 17th Floor

Judge: Hon. Edward M. Chen

1 I, Timothy Sweeney, declare as follows:

2 1. I am the founder and Chief Executive Officer of Epic Games, Inc. (“Epic”), the
3 plaintiff in this action. I submit this declaration in support of Epic’s Motion for a Temporary
4 Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue.

5 2. I founded Epic in 1991 in my parents’ basement. Over the years, Epic has
6 developed a number of popular video games, as well as a software suite called the *Unreal Engine*
7 that allows other developers to create three-dimensional content for use in games, movies,
8 television, architecture, art, virtual reality experiences and other applications.

9 **Fortnite**

10 3. Currently, Epic’s most popular and successful game is *Fortnite*. As of June 2020,
11 *Fortnite* topped 350 million registered users around the world. *Fortnite* is an online video game.
12 It is available for Microsoft Windows, macOS, PlayStation 4, Xbox One and Nintendo Switch.
13 After beta testing, a mobile version of *Fortnite* was released on Apple’s mobile operating system
14 (“iOS”) in April 2018 and on the Android mobile operating system in October 2018.

15 4. *Fortnite* includes three main game modes: (i) *Battle Royale*, an elimination and
16 survival match involving up to 100 players; (ii) *Save the World*, a mode that involves up to four
17 players teaming up against non-playable computer characters; and (iii) *Creative*, where players
18 can build custom structures on a private island for use in other game modes. In *Fortnite*, players
19 can create new environments, dance, chat, socialize, and even attend concerts and film
20 screenings. Travis Scott performed in *Fortnite* in April 2020, and Diplo performed in *Fortnite* in
21 July 2020. On July 4, 2020, *Fortnite* players could watch, within the game, *We the People*, a
22 roundtable on racial equity in America hosted by Van Jones. *Fortnite* is more than just another
23 game. *Fortnite* is a destination where friends meet online to hangout, socialize, build worlds, and
24 share experiences.

25 5. *Battle Royale* is the most popular *Fortnite* gameplay mode. *Battle Royale*
26 storylines and gameplay evolve over time, as new chapters and seasons are released periodically.
27 A season typically lasts around ten weeks and is a subset of a larger chapter. The current *Fortnite*
28 iteration is Chapter 2, Season 3. The next season is scheduled to be released on August 27, 2020.

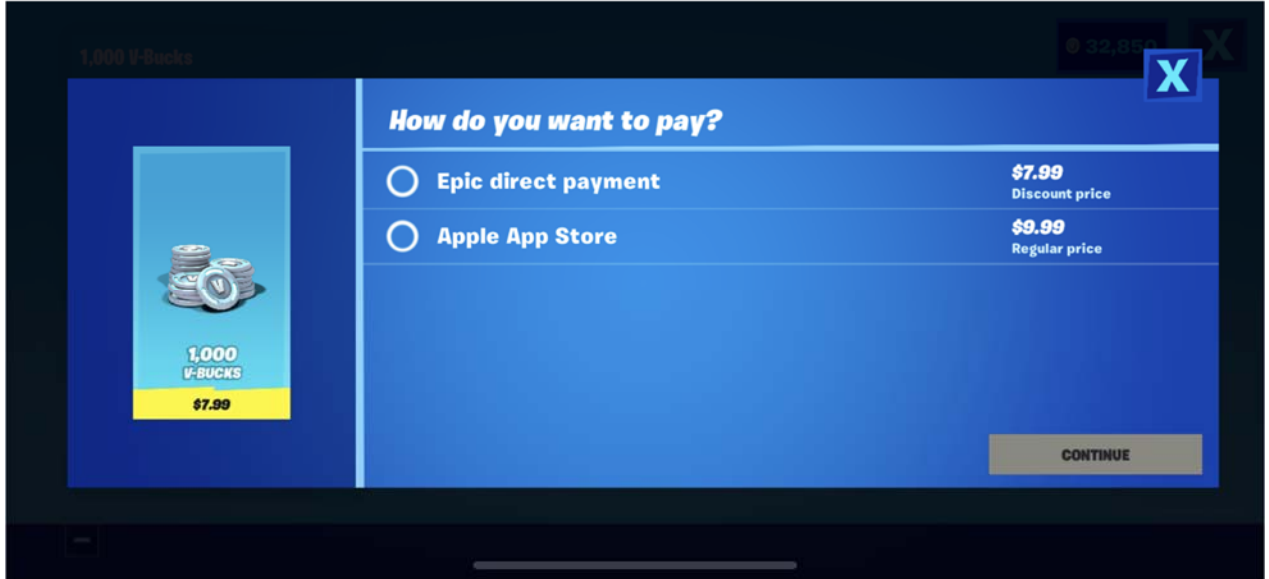
1 6. Although the *Battle Royale* gameplay mode is available free of charge, users can
2 make a range of in-app purchases in *Fortnite* for digital content used in the app, including digital
3 avatars, costumes, dances, and other cosmetic items. *Fortnite* has two primary methods for in-
4 app purchases: a subscription model, called a “Battle Pass”, and a la carte purchases. A
5 Battle Pass lasts for the duration of a season and enables players to unlock a wide variety of
6 items, as well as new gameplay features called “challenges”. Some *Fortnite* content is purchased
7 with local currency, but most purchases are made with V-Bucks, an in-game currency.

8 7. Most gameplay in *Fortnite* is multi-player. People can play online with friends
9 and family, with teams, or with other gamers of similar skill levels with whom they are matched.
10 *Fortnite* offers cross-platform play. That means that players using different video gaming
11 systems—including personal computers, dedicated gaming consoles, and mobile devices like
12 smartphones and tablets—can play together in the same online space. Currently, *Fortnite* cross-
13 platform play is available across Sony’s PlayStation 4, Microsoft’s Xbox One, the
14 Nintendo Switch, PCs, Macs, and certain Android and (when accessible) iOS mobile devices.

15 8. For players to play together online, they must have the same “version” of *Fortnite*
16 software. Successive versions introduce new gameplay and content, both at the beginning of a
17 new season and during the course of a season. For example, *Fortnite* Chapter 1, Season 4
18 introduced shopping carts as the first land vehicles available in the game, which then ceased to be
19 available at the end of Season 8. Chapter 2 elevated aquatic gameplay by introducing game maps
20 that included rivers and navigation by boat. By Chapter 2, Season 3, portions of game maps were
21 flooded, the superhero Aquaman was added as a character, and sharks were introduced in
22 challenges and (to players’ delight) as methods of transportation. The current version of *Fortnite*
23 is Version 13.40, which introduced drivable cars to *Fortnite* gameplay for the first time.

24 9. On the morning of August 13, 2020, Epic announced a 20% price reduction for in-
25 app purchases on all platforms, including but not limited to iOS devices. At the same time, as
26 described in more detail in the Declaration of Andrew Grant, dated August 17, 2020 (the “Grant
27 Declaration”), Epic introduced the option for *Fortnite* players on iOS to make in-app purchases
28 using Epic’s own payment system. iOS users looking to make purchases within *Fortnite* were

given a choice, as shown in the below screenshot of the in-game payment menu:



10. Players could continue to make their purchases using Apple In-App Purchase (“IAP”) (which imposes a 30% “app tax” on such transactions), in which case they would pay the prior prices, or they could use Epic’s direct pay option and pay the new lower prices.

Apple’s Retaliation

11. In retaliation for Epic making this lower-cost option available to users, on August 13, 2020, at approximately 11:19 a.m. Pacific time, Apple removed *Fortnite* from the App Store. As a result, new users cannot download the app on iOS devices, and iOS users who have already downloaded prior versions of the app will not receive future updates to *Fortnite* (either automatically or by searching the App Store for the update). From the time Epic’s direct payment option was launched until yesterday, August 16, 2020, more than half of iOS *Fortnite* players who made an in-app purchase chose to use Epic’s direct payment over IAP.

12. Apple’s actions will “break” *Fortnite* for millions of existing players. Epic typically releases updates to *Fortnite* multiple times every month, but with *Fortnite* out of the App Store, existing iOS users can no longer update the game. Indeed, on August 14, 2020, Epic submitted to Apple for review Version 13.40.2. Apple rejected that update early the next morning. That means all existing iOS users of *Fortnite* are now doomed to obsolescence within

1 weeks. Because iOS users can no longer update the game, they will be unable to play *Fortnite*
2 with most other players, who will have the then-current version available on other platforms. The
3 millions of people who play *Fortnite* on iOS devices every day will be unable to play with their
4 friends and family who use other platforms—and the millions of others who play on other
5 platforms will be deprived of the ability to interact through *Fortnite* with players on iOS devices.

6 13. Much of the joy in *Fortnite* comes from interacting with other people in the virtual
7 world. *Fortnite* connects players from around the globe in a social experience that, for many,
8 could not be replicated outside of the app, where distance and other difficulties keep people apart.
9 *Fortnite* is a forum for friends and family to connect and play, to build and create together, and to
10 share cultural experiences. Apple's actions will close this social gathering space used by many
11 people. The angry outcry in response to Apple's actions, which has already begun, will cause
12 serious harm to Epic's reputation and goodwill among its users. In the entertainment software
13 industry, delayed releases or mishandled launches of games often lead to criticism of the
14 developer and/or publisher of the software. What Apple has done here will be much worse.
15 Millions of people who were playing *Fortnite* on iOS devices will suddenly be unable to continue
16 enjoying the game the way they had been. They will be angry. Based on the reactions that have
17 come in so far, they already *are* angry. Apple's retaliation against Epic for giving players a
18 choice of how they want to pay, and the option to pay less, is causing a massive disruption to
19 Epic's player base that will only get worse as time goes on and more updates are released,
20 particularly when the new season of *Fortnite* launches later this month.

21 14. In the short time since Apple's retaliatory action, Epic received numerous
22 complaints through its user support ticket system regarding Apple's removal of *Fortnite* from the
23 App Store. Attached hereto as **Exhibit A** is a true and correct copy of a set of user support tickets
24 directed to Epic's customer support team regarding Apple's removal of *Fortnite* from the App
25 Store (the names and usernames of the users submitting these support tickets have been redacted
26 to protect customer privacy).

27 **Unreal Engine**

28 15. In addition to removing *Fortnite* from the App Store, Apple is also retaliating

1 against a separate part of Epic’s business—the *Unreal Engine*.

2 16. First created in 1998, the *Unreal Engine* is a software suite available to third-party
3 developers to create three-dimensional and immersive digital content for use in games and other
4 applications. Popular video games that rely on the Unreal Engine include *Fortnite*,
5 *PlayerUnknown’s Battlegrounds* (“PUBG”), *Minecraft Dungeons*, *Rocket League*, *Batman:*
6 *Arkham Series*, *Star Wars Jedi: Fallen Order*, *Mortal Kombat*, *Street Fighter V*, *Final Fantasy*
7 *VII Remake*, *Tony Hawk 1-2 Remastered*, *Bioshock*, *Borderlands*, *Infinity Blade*, *Mass Effect*,
8 *Tom Clancy’s Rainbow Six*, *Unreal Tournament*, and *Gears of War 4*, among others. These
9 games are played by hundreds of millions of people around the world. PUBG alone has hundreds
10 of millions of users on Android and iOS mobile devices.

11 17. The *Unreal Engine* is also used far beyond the realm of video games. Developers
12 use it to make digital content for a wide range of commercial uses, including architecture projects,
13 film & television production, medical training, and more. *Unreal Engine* received its first Emmy
14 in 2018 for its contribution to televised broadcasts such as the 2018 Winter Olympics, Super
15 Bowl LII, and numerous e-sports tournaments. Since 2016, *Unreal Engine* has been used in more
16 than 100 film and television productions. For example, *The Mandalorian*—Disney’s television
17 series in the *Star Wars* franchise—was filmed on a stage set within a huge oval LED display. The
18 exteriors and interiors—virtually every background and set—were created in *Unreal Engine* and
19 displayed in real time behind the actors. Similarly, the popular HBO series *Westworld* turned to
20 *Unreal Engine* to develop many of its visual effects. Car makers, including Audi and Ford, have
21 used *Unreal Engine* for a variety of uses including automotive design and engineering, as well as
22 developing digital showrooms in which customers can configure their vehicles with high-fidelity
23 visuals. In aerospace, NASA and Boeing use *Unreal Engine* to train astronauts using virtual
24 reality, and Gulfstream visualizes its jets for its employees and clients. *Unreal Engine* has even
25 helped brain surgeons train for and perform some of the most intricate and challenging aspects of
26 brain surgeries by allowing for detailed real-time digital anatomy simulations.

27 18. Open access to *Unreal Engine* is a core part of Epic’s business philosophy.
28 *Unreal Engine* is free to use for non-commercial purposes, and anyone can download *Unreal*

1 *Engine* and learn to create their own projects. For developers who use *Unreal Engine* to develop
 2 and sell their games or other projects commercially, Epic typically collects a 5% royalty on
 3 revenue generated after the developer reaches \$1 million in gross sales. Alternatively, customers
 4 can negotiate custom or royalty-free licenses with Epic.

5 19. *Unreal Engine* is uniquely valuable to developers given the breadth of its cross-
 6 platform capabilities. Historically, *Unreal Engine 3* (the previous iteration of the engine, which
 7 was released in 2004) supported software developed to run on Windows PC, PlayStation 3, and
 8 Xbox 360. In 2010, Epic expanded *Unreal Engine*'s capabilities to support the iOS and Android
 9 platforms as well, allowing developers to offer their *Unreal*-powered applications on players'
 10 smartphone and tablet devices. Since then, Epic has continued to develop and expand *Unreal*
 11 *Engine*'s platform offerings, releasing regular updates to the *Unreal Engine* to add new features
 12 and enhanced developer tools. The current iteration of the engine, *Unreal Engine 4*, was initially
 13 launched in 2014 and has since gone through 25 update releases. Today, developers can use
 14 *Unreal Engine* to develop games and other software for Windows PC, PlayStation 4, PlayStation
 15 5, Xbox One, Xbox Series X, Nintendo Switch, Google Stadia, MacOS, iOS, and Android OS.

16 20. In 2014, Guinness World Records named *Unreal Engine* the most successful video
 17 game engine in history.

18 **Apple's Further Retaliation**

19 21. As described in more detail in the Grant Declaration, at 12:04 a.m. Pacific time on
 20 August 14, 2020, Apple notified Epic that its "membership in the Apple Developer Program is
 21 suspended" and that its "Apple Developer Program Account will be terminated" within 14 days
 22 unless Epic takes certain steps that Apple requires. Among other things, Apple stated that
 23 *Fortnite* violated the Apple Developer Program License Agreement "by allowing users to
 24 purchase digital items within the app without using the In-App Purchase API. This payment
 25 model is not authorized under the App Store Review Guidelines, and must be removed from your
 26 app in order to cure this breach." Attached hereto as **Exhibit B** is a true and correct copy of
 27 Apple's August 14, 2020 notification.

28 22. In the August 14 notice to Epic, Apple further stated that "[i]f your membership is

1 terminated, you may no longer submit apps to the App Store, and your apps still available for
2 distribution will be removed”.

3 23. But Apple’s August 14 notice was not even limited to Epic’s iOS apps. It said that
4 upon termination from the Apple Developer Program, Epic “will also lose access to the following
5 programs, technologies, and capabilities” and gave an extensive list. That list specifically
6 mentioned not just tools and capabilities related to apps for the App Store but also included
7 matters related to the *Unreal Engine*, including “engineering efforts to improve hardware and
8 software performance of Unreal Engine on Mac and iOS hardware”.

9 24. When Apple terminates Epic’s Apple Developer Program accounts, the
10 consequences will be devastating. According to Apple’s August 14 notice, upon termination,
11 Epic will lose access to the widely available software development kits (“SDKs”), application
12 programming interfaces (“APIs”) and other developer tools necessary to develop software for use
13 on iOS and macOS. As described in more detail in the Declaration of Nicholas Penwarden, dated
14 August 17, 2020, without access to these SDKs, APIs, and other tools, Epic would be unable to
15 develop future updates to the *Unreal Engine* for use on iOS and macOS, and would thus be
16 forced to discontinue *Unreal Engine* for iOS and macOS.

17 25. This would be an existential threat to the *Unreal Engine*. Many game developers
18 rely on engines like the *Unreal Engine* to develop commercially successful games that will run
19 across a wide range of gaming platforms, and over many generations and new versions of the
20 game. Therefore, one key factor that developers consider when choosing an engine is the range
21 of platforms the engine is compatible with, and the likelihood that the underlying engine they
22 select will continue to support the major gaming platforms such as Windows PC and Mac
23 computers, Xbox and PlayStation gaming consoles, and iOS and Android devices. An engine that
24 cannot support Apple’s platforms will not be a viable option for any developer that wants its
25 software to be made available to the hundreds of millions of active iOS and macOS users, or even
26 for those developers that want to reserve the possibility of expanding to iOS or macOS in the
27 future.

28 26. Epic’s business will be harmed as soon as it loses access to Apple’s software

1 tools and SDKs. Developers invest considerable time and resources learning to use and to
2 develop games based on *Unreal Engine*, often with the expectation that those games will be
3 supported on Apple's platforms. This is particularly true because the mobile gaming category is
4 substantially larger than computing or console gaming, and mobile remains a high-growth area in
5 the gaming industry. If Epic can no longer develop future updates for the *Unreal Engine* that
6 support iOS and macOS, developers will not choose to use *Unreal Engine* to develop any games
7 or other products for use on Apple devices. The loss of *Unreal Engine*'s ability to support these
8 important platforms will therefore cause irreparable harm to Epic's product offering, as many
9 developers will select a competing engine for their new projects, or for the next versions of their
10 games. In addition, the third-party developers who rely on Epic's engine and support are in
11 jeopardy of losing the long-term support of Epic and its *Unreal Engine* tools for use in connection
12 with Apple devices.

13 27. Apple's retaliatory actions to block Epic's ability to continue to develop and
14 support its *Unreal Engine* for iOS and macOS would thus not only harm developers who already
15 use *Unreal Engine*, but it would also cripple the engine's desirability and future commercial
16 viability across all platforms.

17 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
18 and correct and that I executed this declaration on August 17, 2020 in Cary, North Carolina.

19
20 /s/ Tim Sweeney

21 Timothy Sweeney
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1 I hereby attest that I have on file all holographic signatures corresponding to any
2 signatures indicated by a conformed signature (/s/) within this e-filed document.

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4 /s/ Paul J. Riehle

5 Paul J. Riehle
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